



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

April 12, 1962

Honorable Alvin E. Pape  
County Attorney  
Guadalupe County Courthouse  
Seguin, Texas

Opinion No. WW-1307

Re: Whether the City Clerk may return absentee voters' poll tax receipts, now being held by the Clerk under Subdivision 6 of Art. 5.05, Texas Election Code for 30 days after such voters have voted absentee in a city election, so as to enable such voters to use the poll tax receipts again to vote absentee in school and primary elections, occurring within less than 30 days of the preceding city election.

Dear Mr. Pape:

In your letter you stated:

"The city election in Seguin will be held on April 3. The City Clerk is now retaining the poll taxes of persons seeking to cast an absentee ballot as required by Article 5.05, Subdivision 2, of the Election Code of the State of Texas. Subdivision 6 provides that the Clerk shall return the poll tax receipts and the exemption certificates to the absentee voters after the expiration of 30 days unless a contest has been filed.

"Many voters have cast an absentee ballot in the City election and have requested that their poll tax receipts be returned to them so that if necessary they can vote absentee in the school and primary elections which will follow shortly. Is the City Clerk required to hold such poll tax for 30 days as provided by the Code or may she return them to the voter at an earlier date? If she

can return such poll tax receipts at a date earlier than that provided in the Code, what is the earliest date after the election she can release such poll tax receipts to the voters?"

Subdivision 2 of Article 5.05, Texas Election Code reads in part as follows:

"An elector desiring to vote absentee shall make written sworn application for an official ballot to the county clerk of the county of his residence, . . . Such application shall be accompanied by the poll tax receipt or exemption certificate of the elector, or, in lieu thereof, his affidavit in writing that same has been lost or mislaid. . . ." / Emphasis added /

Subdivision 6 of Article 5.05, Texas Election Code reads in part as follows:

". . .

"The county clerk shall return the poll tax receipts and the exemption certificates to the absentee voters at the end of thirty (30) days unless a contest has been filed."

In your letter you refer to the "City Clerk". This is the same official referred to in the Election Code as the "City Secretary." Art. 7.13, Election Code, reads in part as follows:

"The expense of all city and town elections shall be paid by the municipality in which same are held. In all such elections, . . . , the city secretary, . . . shall do and perform each act which in other elections are required to be done and performed. . . . by . . . the county clerk . . . ." / Emphasis added /

The clerk's authority to mail an absentee ballot rests on the clerk's possession of two documents: (1) a sworn application for absentee ballot, and (2) any one of the following instruments:

(a) poll tax receipt, (b) exemption certificate, or (c) affidavit in writing that same has been lost or mislaid. Seguin is a city with a population in excess of 10,000 inhabitants according to the 1960 Federal Census, so every exempt voter who voted in the city election in Seguin will be required to possess an exemption certificate, and we need not consider the situation of an exempt voter who might live outside a city of 10,000 inhabitants, and who possesses neither a poll tax receipt nor an exemption certificate.

Why does Subdivision 6 of Article 5.05, Texas Election Code require the clerk to hold the poll tax receipts and exemption certificates for 30 days? Art. 9.03, Texas Election Code reads in part as follows:

"Any person intending to contest the election of any one holding a certificate for any office mentioned in this law, shall, within thirty (30) days after the return day of election, give him a notice thereof in writing. . ."

Subdivision 6 of Article 5.05, Texas Election Code, provides that the poll tax receipts and exemption certificates should be returned at the end of 30 days, ". . . unless a contest has been filed." If any of the absentee votes should be contested in the election contest, it is obvious that the absentee voter's poll tax receipt or exemption certificate ought to be available for evidence in court. We hold, therefore, that the city clerk may not return the poll tax receipts or exemption certificates to the absentee voters until the expiration of thirty (30) days after the return day of the election.

This still leaves the question of how these absentee voters are going to participate in another election, which follows so closely on the heels of the city election as to make it impossible for the clerk to return their poll tax receipts and exemption certificates in time to use them in the subsequent election. This problem would exist whether the voter intended to vote in the second election in person at the polling place on election day, or by absentee ballot prior to the second election. If his poll tax receipt or exemption certificate had not been returned by the clerk at the time he went to vote in the second election, and if it were mandatory that he have such poll tax receipt or exemption certificate in his possession before he could participate in the second election, he would be disenfranchised.

Art. 5.02, Texas Election Code, provides in part:

" . . . If such voter shall have lost or misplaced said tax receipt, he or she shall be entitled to vote upon making and leaving with the judge of the election an affidavit that such tax was paid by him or her, or by his wife or by her husband during the time allowed by law preceding such election at which he or she offers to vote, and that said receipt has been lost, misplaced, or left at home. . . ."  
/ Emphasis added /

Attorney General's Opinion No. WW-594 (1959) holds that the above rule also applies to exemption certificates. Subdivision 2 of Art. 5.05, supra, provides for affidavits of lost poll tax receipts or exemption certificates. In the strict literal sense of the word, the poll tax receipt or exemption certificate in the hands of the clerk, who is holding it pursuant to Subdivision 6 of Art. 5.05, supra, is not "lost." Nor is it "misplaced" in the sense that the owner of the same has put it someplace and momentarily forgotten where it is. But it is obvious that the voter, in these circumstances, is entitled to make affidavit that he has misplaced such tax receipt or certificate. To hold otherwise, would reach the absurd result that the voter who voted absentee in one election was disenfranchised to vote in a subsequent election held within 30 days of the first election, simply because he had no way to regain possession of his poll tax receipt or exemption certificate. In 39 Tex.Jur., Statutes, Sec. 95, page 179, the rule is stated:

" . . .

" . . . statutes are frequently given an interpretation at variance with their literal terms. . . .

" . . . Thus it has been decided that words or clauses should not be given their literal meaning when such an interpretation would thwart the plain purpose of the Legislature, or would lead to palpable absurdity, . . . , injustice. . . . , if such construction can reasonably be avoided."

We hold, therefore, that a voter who has voted absentee in an election, and by reason of Subdivision 2, Art. 5.05, Texas Election Code, has delivered his poll tax receipt or exemption certificate together with his application to the county clerk

or city clerk in order to receive his absentee ballot, and whose poll tax receipt or exemption certificate has not been returned to such absentee voter, because it is being held by such clerk for 30 days after such election pursuant to Subdivision 6 of Art. 5.05, may vote at any subsequent election held during the period while his tax receipt or certificate is being so held by such clerk by making affidavit of "lost" or "mislaid" poll tax receipt or exemption certificate as prescribed by Art. 5.02, or Subdivision 2 of Art. 5.05, Texas Election Code.


### S U M M A R Y

City Clerk, holding an absentee voter's poll tax receipt or exemption certificate, delivered or mailed to him by a voter in a city election in order to obtain an absentee ballot, as required by Subdivision 2, Art. 5.05, Texas Election Code, must hold such poll tax receipt or exemption certificate for thirty (30) days after the return day of the election, before returning the same to the voter. Subdivision 6, Art. 5.05, Texas Election Code.

A voter, whose poll tax receipt or exemption certificate is in the hands of the clerk, as a result of having made application for an absentee ballot, may vote in any subsequent election during the period while the clerk retains such tax receipt or certificate, by making affidavit of "lost" or "mislaid" poll tax receipt or exemption certificate, as provided by Art. 5.02, or Subdivision 2 of Art. 5.05, Texas Election Code.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Riley Eugene Fletcher  
Assistant

REF/jp

APPROVED:

OPINION COMMITTEE:

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REVIEWED FOR THE ATTORNEY GENERAL  
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